IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DORIS ROBLETO	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner of the Social Security Administration,	:	NO. 05-4843
	:	
	:	
Defendant.	:	

MEMORANDUM

Baylson, J. **September 28, 2006**

Plaintiff, Doris E. Robleto ("Plaintiff") seeks judicial review of the decision of the Commissioner of the Social Security Administration ("Defendant") denying her claim for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act ("the Act"), 42 U.S.C. §§ 1381-1383. Jurisdiction is established under § 405(g) of the Act. Id. Presently before this Court are parties' Cross-Motions for Summary Judgment.

I. Factual Background and Procedural History

Plaintiff is currently forty years old and has a General Equivalency Degree ("GED"). (R. at 39). Over the course of her adult life, she has held a wide variety of jobs including as a ticket seller, cashier, waitress, telemarketer, manager at a gas station, drug and alcohol abuse counselor, and housekeeper. (R. at 40-48). She ceased working altogether in 1998, an event which she attributed her to the death of her infant daughter. (R. at 48).

On July 23, 2002, Plaintiff filed an application for SSI alleging that she had been disabled by fibromyalgia, sciatica, asthma, and bone spurs on her feet since May 1, 1998.[1] (R. at 18, 95-98,

[1] Plaintiff's original alleged onset date was May 1, 1998 (R. at 96), but she later amended that date to July 23, 2002 in order to reflect the date of the application at issue in this case (R. at 77).

110). After the state agency administering these claims denied her application on January 2, 2003 (R. at 82-85), Plaintiff filed a timely request for a hearing before an Administrative Law Judge ("ALJ"). (R. at 86). The ALJ conducted a hearing on November 26, 2003 at which plaintiff, a medical expert in psychiatry, and a vocational expert testified. (R. at 36-78). Plaintiff was represented by counsel at this hearing. During the hearing, Plaintiff also alleged that she was disabled due to bipolar disorder. (R. at 51). The ALJ issued a ruling on January 13, 2004 finding that Plaintiff was not disabled and therefore ineligible for SSI. (R. at 15-30). The Appeals Council of the Social Security Administration denied Plaintiff's request for review of this ruling on August 4, 2005. (R. at 4-6). Plaintiff subsequently filed this Action.

II. Parties' Contentions

A. Plaintiff's Motion for Summary Judgment

In her Motion for Summary Judgment, Plaintiff alleges that the ALJ made two major errors in his decision to deny Plaintiff SSI benefits. First, Plaintiff argues that the ALJ erred when he failed to give controlling or substantial weight to the opinion of Plaintiff's treating psychiatrist, Dr. Ronald Rosillo, that Plaintiff's ability to function in a workplace setting on a sustained basis was "poor or none." (Pl.'s Br. at 16-17). Plaintiff argues that the ALJ's decision to discount this opinion was both factually and legally incorrect. Plaintiff points to evidence in the record of Plaintiff's history of mental impairment that the ALJ failed to specifically address in his opinion as well to several instances where that evidence contradicts statements made by the ALJ. Id. at 12-15. Plaintiff further asserts that the ALJ's failure to give proper consideration to Plaintiff's

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Plaintiff has filed two previous applications for disability benefits, on June 24, 1999 and April 20, 2001, both of which were denied. Plaintiff is time-barred from requesting that either of these claims be reopened. 20 C.F.R. § 416.1487-1488.

mental impairments led the ALJ to pose a defective hypothetical question to the vocational examiner ("VE") that did not outline all the claimant's limitations as supported by the record. Id. at 28-29.

Second, Plaintiff argues that the ALJ failed to give adequate consideration to the claimant's subjective complaints of pain. Id. at 29. In support of this argument, she critiques the ALJ's evaluation of the medical evidence that Plaintiff suffers from fibromyalgia and chronic pain syndrome. Id. at 36.

As a consequence of these errors, Plaintiff argues that the ALJ's decision was not supported by substantial evidence in the record and requests that the Court either reverse the final administrative decision of Defendant and grant Plaintiff benefits outright, or remand the matter for a new hearing. Id. at 37-38.

B. Defendant's Motion for Summary Judgment

In Defendant's motion, Defendant first argues that the ALJ properly weighed the medical evidence in its decision, and that the ALJ fully explained why he rejected the opinion of Plaintiff's treating psychiatrist that Plaintiff was unable to function in a workplace setting as a result of mental impairment. (Def.'s Br. at 17). According to Defendant, Dr. Rosillo's opinion was not only contradicted by substantial evidence in the record but was also inconsistent with his own clinical findings. Id. at 17-18. Defendant also points out that some of the evidence relied upon by Plaintiff to support her claim of mental impairment was of limited evidentiary value. Id. at 19-20.

Second, Defendant contends that the ALJ's evaluation of Plaintiff's credibility complied with the applicable regulations. Defendant asserts that the objective medical evidence in the case

does not support Plaintiff's complaints of pain, that the record shows that she was not compliant with treatment, and that there are a large number inconsistencies in the record that serve to undermine Plaintiff's credibility. Id. at 23-27.

Defendant concludes that the evidence contradicting Dr. Rosillo's opinion coupled with numerous examples of Plaintiff's lack of credibility show that the ALJ's decision is supported by substantial evidence in the record and should accordingly be reaffirmed. Id. at 28.

III. Legal Standard

The standard of review of an ALJ's decision is plenary for all legal issues. See Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 431 (3d Cir. 1999). The scope of the review of determinations of fact, however, is limited to determining whether or not substantial evidence exists in the record to support the Commissioner's decision. See Rutherford v. Barnhart, 399 F.3d 546, 552 (3d Cir. 2005). As such, "[t]he Court is bound by the ALJ's finding of fact if they are supported by substantial evidence in the record." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999); see also Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1191 (3d Cir. 1986) (holding that if "an agency's fact finding is supported by substantial evidence, reviewing courts lack power to reverse . . . those findings"). The Court must not "weigh the evidence or substitute [its own] conclusions for those of the fact-finder." Rutherford, 399 F.3d at 552 (quoting Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992)). "Substantial evidence does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999) (internal quotation omitted).

IV. Discussion

In order to establish a disability under the Social Security Act, a claimant must demonstrate a medically determinable mental or physical impairment that prevents him from engaging in any "substantial gainful activity" for a twelve month period. 42 U.S.C. § 423(d). The regulations proscribe a five-step analysis for determining whether an individual is disabled. 20 C.F.R. § 404.1520(a); Ramirez v. Barnhart, 372 F.3d 546, 550-51 (3d Cir. 2004). The fact-finder must determine: (1) if the claimant currently is engaged in substantial gainful employment; (2) if not, whether the claimant suffers from a "severe impairment;" (3) if the claimant has a "severe impairment," whether that impairment meets or equals those listed in 20 C.F.R. Part 404, Subpart P, Appendix 1, and thus are presumed to be severe enough to preclude gainful work; (4) whether the claimant can still perform work he or she has done in the past despite the severe impairment; and (5) if not, whether the claimant is capable of performing other jobs existing in significant numbers in the national economy in view of the claimant's age, education, work experience and residual functional capacity ("RFC"). Id. If there is an affirmative finding at any of Steps 1, 2, 4 or 5, the claimant will be found "not disabled." 20 C.F.R. § 404.1520(b)-(g); see also Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). Plaintiff carries the initial burden of demonstrating by medical evidence that he or she is unable to return to his or her former occupation. See Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir.1979). Once Plaintiff has done so, the burden shifts to the Commissioner to show the existence of substantial gainful employment the claimant could perform. Id.

A. The ALJ's Opinion

In his January 13, 2004 opinion denying Plaintiff's SSI claim, the ALJ first concludes that, while Plaintiff has an impairment or combination of impairments that are considered severe under

the requirements set forth in the applicable Social Security regulations, see 20 C.F.R. § 416.920(c), "the medically determinable impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart 4, Regulation No. 4." (R. at 29). In addition, the ALJ did not find Plaintiff's allegations regarding her limitations to be "totally credible." Id. Instead, the ALJ found that Plaintiff has the RFC to complete the tasks associated with certain jobs:

> She can lift twenty pounds occasionally, ten frequently; stand and/or walk for a total of two hours in an eight-hour workday; sit for a total of six hours in an eight-hour workday, provided that she can sit and stand at will; push and/or pull occasionally with her lower extremities; climbs stairs and ramps occasionally, ladders, ropes and scaffolds never; balance, stoop and kneel occasionally; crouch and crawl never; withstand temperature extremes, wetness, humidity, moving machinery, heights, fumes, dusts, odors, gases and poor ventilation, provided that she avoids concentrated exposure to the same. She can perform no complicated tasks. She can only engage in simple decision-making. She requires a low stress work environment. She also requires a stable work environment in which there are no more than occasional changes in work settings, tools, procedures, etc. She has occasional ability to interact with co-workers and supervisors, but no such ability to do so with the public. She has occasional lapses in concentration.

(R. at 29-30). The ALJ then applied the Medical-Vocational Guidelines and determined that, although Plaintiff's exertional limitations do not allow her to perform the full range of sedentary work, she could perform a significant number of jobs in the national economy including as a product inspector or lampshade assembler. (R. at 30). The ALJ thus concluded that Plaintiff was not under a "disability" within the meaning of the Act at any time through the date of the decision. Id.

With respect to Step 4, the ALJ adopted the opinion of the vocational expert that the Plaintiff is "unable to return to her past relevant work because her mental condition does not allow her perform semi-skilled work . . . [or] to transfer her job skills to other work for the same reason." (R. at 27-28). Accordingly, the issues in this case turn on the ALJ's assessment under

Step 5 of Plaintiff's ability to perform other jobs existing in the national economy in light of Plaintiff's age, education, work experience and RFC. 20 C.F.R. § 404.1520(a)(4)(iv), (f).

B. The ALJ Failed to Properly Credit the Opinion of Plaintiff's Treating Physician

Plaintiff's primary contention is that the ALJ erred in failing to fully credit the opinion of Plaintiff's treating psychiatrist, Dr. Rosillo, that Plaintiff's ability to function in a workplace setting on a sustained basis was "poor or none." (R. at 284-86). Plaintiff's raises two further issues related to the ALJ's evaluation of Plaintiff's claims of mental impairment. First, Plaintiff contends that it was error for the ALJ not to mention Plaintiff's mental health treatment records, including the GAF score of 38 assigned to her by her treating psychiatrist, when he concluded that her mental impairments were only moderate. Second, Plaintiff argues that the ALJ's failure to list all of Plaintiff's mental impairments in his hypothetical to the VE made it error for the ALJ to rely on the opinion of the VE in concluding that Plaintiff retained the RFC to perform some types of sedentary work. Defendant responds to these contentions that the ALJ adequately weighed all the medical evidence in the record, and that the ALJ's ruling fully explained why he rejected the opinion of Plaintiff's treating physician.

The Third Circuit has repeatedly noted that "[a] cardinal principle guiding disability eligibility determinations is that the ALJ accord treating physicians' reports great weight, 'especially when their opinions reflect expert judgment based on a continuing observation of the patient's condition over a prolonged period of time.'" Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (quoting Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999)). Treating physician's opinions are afforded controlling weight if they are well-supported by diagnostic evidence and are consistent with other medical evidence in the record, and it is an error of law to reject the treating

physician's opinion without adequate explanation. 20 C.F.R. § 404.1527(d)(2); Fargnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001). "[G]reater weight should be given to the findings of a treating physician than to a physician who has examined the claimant as a consultant." Adorno v. Shalala, 40 F.3d 43, 47 (3d Cir. 1994).

At the hearing, Plaintiff testified that she had been undergoing mental health treatment at the New Life Community Health Services ("New Life") under the care of Dr. Rosillo, her psychiatrist, and Boris Belyer, her therapist, for approximately eight months, and that, after an initial consultation, Dr. Rosillo diagnosed Plaintiff with bipolar disorder. (R. at 50-51). At the time of her hearing, Plaintiff was taking Lexapro, Lamictal, Trazadone, and Temazepam to treat this condition. (R. at 51). Plaintiff further testified that she suffered from mood swings. (R. at 53).

The opinion of the treating physician at issue in this case is found in a form titled "Medical Assessment of Ability to Do Work -Related Activities (Mental)," signed and dated by Dr. Rosillo on August 13, 2003. (R. at 284-86). This form contains a series of questions about Plaintiff's ability to make occupational, performance, and personal-social adjustments in the workplace. In response to each question, Dr. Rosillo checked off the box labeled "poor or none," a category which is defined as "[n]o useful ability to function in this area on a sustained basis."[2] He based this conclusion on his medical findings that Plaintiff "experiences extreme mood swings and

[2] Defendant argues that this form has minimal evidentiary value because the Third Circuit has recognized that forms requiring physicians to check boxes and briefly fill in blanks are "weak evidence at best." See Mason v. Shalala, 994 F.2d 1058, 1065 (3d Cir. 1993). Unlike the form at issue in Mason, the medical assessment form filled out by Dr. Rosillo specifically requires physicians to relate any medical findings that support this assessment, an exhortation that Dr. Rosillo followed. (R. at 284); see Mason, 994 F.2d at 1065 (noting that the report at issue "does not call for explanations of examining physician's medical conclusions–and no such explanations appear").

racing thoughts that would make her absolutely disfunctional in any activities," that she is "depressed and extremely emotional[ly] labile" and that she "can't concentrate or focus on one thing at a time." (R. at 285). He further states that she "demonstrates poor memory capacity [and] difficulty comprehending." Id. Dr. Rosillo concludes that Plaintiff's "emotional instability, especially her state of depression [and] anxiety, interfere with patient's daily activities and adjustments." (R. at 286).

Dr. Rosillo's findings are substantiated by Plaintiff's extensive treatment records from New Life. (R. at 24-70). After Dr. Rosillo conducted an initial psychiatric evaluation of Plaintiff on February 13, 2003, he diagnosed her with bipolar disorder and assigned her a Global Assessment Functioning ("GAF") score of 38.[3] (R. at 244-47). His suggested treatment plan included both psychotherapy and prescriptions for Neurotin, Xanax, and Abilify. (R. at 247). The record contains almost monthly medication monitoring notes from Dr. Rosillo, many of which comment on Plaintiff's mental condition. (R. 248-55). These records reflect that, while Plaintiff was not always compliant in taking her medication and, at least in October 2003, felt "in command all the time [and was] much happier and assertive," (R. at 254), she was also frequently irritable, depressed and anxious. (R. at 246, 250-51, 254). Her progress notes from her approximately biweekly sessions with her therapist, Boris Belyer (there are also treatment notes from a therapist named Larisa Rozenberg), while less legible than Dr. Rosillo's notes, also

[3] The GAF test seeks to measure an individual's psychological, social, and occupational functioning on a hypothetical continuum of mental health/illness using a scale of one to one hundred. See American Psychiatric Association, Diagnostic and Statistical Manual 27–36 (4th ed. 2000) (hereinafter "DSM-IV"). A GAF score of 31–40 signifies "some impairment in reality testing or communication . . . or major impairment in several areas, such as work or school, family relations, judgment, thinking or mood." DSM-IV at 34.

indicate that Plaintiff was frequently depressed and anxious. (R. at 256-70).

The ALJ's opinion devotes a single paragraph in a lengthy opinion to Plaintiff's allegations of mental impairment resulting from bipolar disorder. In that paragraph, the ALJ states that he credits the opinion of Dr. Richard Saul, the physician who testified at Plaintiff's disability benefits hearing, that Plaintiff's medical records indicate only moderate mental impairment. (R. at 27, 67). The ALJ also credits Dr. Saul's assertion that the "medical record did not support the opinion of Dr. Ronald Rosillo to the effect that the claimant has no residual mental functional ability." (R. at 27). The ALJ further notes that the opinion of Dr. J.J. Kowalski, a state agency psychiatrist who reviewed Plaintiff's medical records, agrees with Dr. Saul's assessment. (R. at 27). The ALJ then references the conclusion of a Masters of Social Work ("MSW") intern working under the supervision a psychotherapist who examined Plaintiff on November 26, 2002 and assigned her a GAF score of 55.[4] (R. at 240). Finally, the ALJ notes that Plaintiff has never been hospitalized for mental problems and that she only receives medication for pain management, not to treat her mental impairment. Accordingly, the ALJ finds that "Dr. Rosillo's opinion is not in accord with the medical record." (R. at 27).

The Court finds that the evidence upon which the ALJ relied in reaching his decision to discount Dr. Rosillo's opinion is of limited of evidentiary value, and that the ALJ erred because he offered no explanation for why he credited this evidence above the opinion of, Dr. Rosillo, Plaintiff's treating physician. Dr. Saul's testimony, upon which the ALJ primarily relies in discrediting Dr. Rosillo's assessment of Plaintiff's functional capacity, is extremely brief, cryptic,

[4] GAF scores between 51 and 60 indicate moderate symptoms (e.g., circumstantial speech and occasional panic attacks or moderate difficulty in social or occupational functioning as evidenced by few friends and conflicts with peers or coworkers). See DSM-IV at 34.

difficult to follow. (R. at 66-67). In his testimony, Dr. Saul lists the dates of some of Plaintiff's medical treatment records and then reads aloud a few of the notations about Plaintiff's mood and behavior found in those records . Id. at 66. With one exception, he does not identify which of Plaintiff's health care providers filled out each record or provide any other information that could give context to those notes. He then concludes, without explaining the significance of the notes he has just read, that Dr. Rosillo's rating of plaintiff's functional capacity is "contradictive [sic]." Id. at 66. The ALJ's opinion offers no explanation for why he credits this cryptic and almost unintelligible testimony and leaves the Court with no basis upon which to review the ALJ's decision to credit Dr. Saul's opinion over that of Dr. Rosillo. This is clearly inadequate under Third Circuit precedent and requires remand for further explanation of the ALJ's decision.

The remaining evidence that the ALJ cites to support his conclusion that Plaintiff only suffers from moderate mental impairment suffers from similar defects. The ALJ points to the opinion of Dr. J.J. Kowalski, the state agency psychiatrist who reviewed Plaintiff's medical records and applied the Psychiatric Review Technique required by the Social Security regulations under 20 C.F.R. § 404.1520a. Dr. Kowalski concluded after reviewing Plaintiff's medical records that Plaintiff "doesn't appear to have any psychiatric condition and takes an anti-depressant for the treatment of her pain. Some reactive depression may be present which does not significantly limit functioning." (R. at 213). As noted above, Dr. Kowalski never personally examined Plaintiff and completed his review of her medical records before Plaintiff began undergoing psychiatric treatment at New Life with Dr. Rosillo. As such, it has minimal evidentiary value in countering Dr. Rosillo's assessment of Plaintiff's functional capacity. See

Morales, 225 F.3d at 319-20.[5]

As further support for his determination, the ALJ states that claimant has never been hospitalized for mental problems and that "the medication that she receives is to treat her complaint of pain and not mental disease." (R. at 27). This statement is inconsistent with the facts in the record. According to Ms. Robleto's testimony as well as to a form completed by her lawyer listing "claimant's medications," she was taking medication for both depression and bipolar disorder at the time of the hearing. (R. at 51, 139). Dr. Saul made the same mistake in his testimony, testifying that Plaintiff was not taking Lexapro, Lamictal, or Trazadone (R. at 67), even though Plaintiff had testified earlier in the same hearing that she was currently taking all three drugs. (R. at 51). In light of these factual consistencies, this evidence cannot be credited.

The only evidence cited by the ALJ that continues to support his decision to discount Dr. Rosillo's opinion is the GAF score of 55 assigned to Plaintiff on November 26, 2002 by Tia L. Jackson, a MSW intern at the University of Pennsylvania Health System Department of Psychiatry under the supervision of David B. Wohlsifer, a psychotherapist. (R. at 240-41). As noted above, a GAF score of 55 indicates only moderate impairment. Because the evaluation of a

[5] The ALJ states Dr. Kowalski's assessment agrees with that of Dr. Saul. This reflects "bootstrapping" and lends little support to the ALJ's opinion because it appears that Dr. Saul's opinion used Dr. Kowalski's assessment as one of the bases for his own opinion. In his testimony, Dr. Saul himself does not specifically refer to Dr. Kowalski's evaluation, but instead notes that Dr. Horacio Buschiazzo, a state agency physician who conducted an examination of Plaintiff as part of her initial disability determination on November 11, 2002, made "all medical diagnosis" but "no psychiatric diagnosis." (R. at 66). The form completed by Dr. Bushchiazzo contains no information, positive or negative, on Plaintiff's psychiatric status. Dr. Saul is apparently referring to the Psychiatric Review Technique form completed by Dr. Kowalski which, as discussed above, is of limited evidentiary value. Nevertheless, it is not for the Court to speculate what the ALJ meant when he stated that Dr. Kowalski's assessment agreed with the opinion of Dr. Saul. Instead, the ALJ was obliged to explain his reasoning. His failure to do so makes meaningful review of this portion of the ALJ's decision impossible.

psychotherapist is not an "acceptable medical source" under 20 C.F.R. § 416.913(a), it cannot, standing alone, be given controlling weight in a disability determination even though it may be used to assess the severity of a claimant's impairments and his or her ability to work. See 20 C.F.R. § 416.913(d)(1); Hartranft v. Apfel, 181 F.3d 358, 361 (3d Cir. 1999). Therefore, while it was within the ALJ's discretion to credit this evidence, it was not enough to counter the opinion of Dr. Rosillo, an acceptable medical source under the Social Security regulations, as the opinion of Plaintiff's treating physician.

Third Circuit precedent dictates that an ALJ may only discount a treating physician's opinion if it is contradicted by other evidence in the record. If such contradictory evidence exists, the Third Circuit has recognized "a particularly acute need for an explanation of the reasoning behind the ALJ's conclusions, and will vacate or remand a case where such an explanation is not provided." See Fargnoli v. Massanari, 247 F.3d 34, 42 (3d Cir. 2001). The Court finds that the ALJ did not develop or cite to sufficient record medical evidence to justify affording no weight to the conclusions of Dr. Rosillo that Plaintiff's mental impairments leave her with poor or no capacity to function in a workplace setting on a sustained basis. See Morales, 225 F.3d at 317; Plummer, 186 F.3d at 429. In this case, the ALJ offered no explanation for his decision to credit the limited evidence he did cite over the opinion of Plaintiff's treating physician. Thus, the Court concludes that the ALJ's decision was not supported by substantial evidence.

The Court will therefore remand this case to the ALJ for further development and explanation of record medical evidence from which the ALJ should determine whether it

sufficiently contradicts Dr. Rosillo's opinion as to Plaintiff's disability.[6] To comply with the treating physician rule, upon remand the ALJ must cite to specific and substantial medical evidence that is contrary to the opinion of Dr. Rosillo. The ALJ may seek to provide this necessary level of detail through more extensive reference and citation to the existing record or via the taking of additional testimony from Dr. Saul or another, independent medical professional.

1. The ALJ Did Not Consider All the Record Evidence Before Him and Failed to Provide Adequate Explanation for His Decision to Discount that Evidence

Plaintiff also objects that the ALJ's failed to discuss all the medical records in evidence before him. (Pl.'s Br. at 15). Plaintiff points out the ALJ's decision made no mention of Plaintiff's treatment records from New Life, including the GAF score of 38 assigned to her by Dr. Rosillo (R. at 247), which indicates "some impairment in reality testing or communication . . . or major impairment in several areas, such as work or school, family relations, judgment, thinking or mood," DSM-IV at 34. Id.

An ALJ must consider all of the evidence before him or her in making a determination about a claimant's residual functional capacity. See Burnett v. Com'r of Soc. Sec. Admin., 220 F.3d 112, 121 (3d Cir. 2000). In order to facilitate review of that determination, the ALJ must then indicate in his opinion which evidence he rejects and his rationale for doing so. Id. At the same time, "the ALJ is not required to supply a comprehensive explanation for rejection of evidence; in most cases, a sentence or short paragraph would probably suffice." Cotter v. Harris,

[6] Though the Court finds that the ALJ's report failed to properly explain a basis for discounting relevant evidence in the record, the Court does not necessarily conclude that Plaintiff is disabled under the Act. The disability determination will be left to the ALJ on remand.

650 F.2d 481, 482 (3d Cir. 1981).

Pursuant to the final rules of the Social Security Administration, a claimant's GAF score is not considered to have a "direct correlation to the severity requirements." 65 Fed. Reg. 50746-01, 50764-65. However, the rules still note that the GAF remains the scale used by mental health professionals to "assess current treatment needs and provide a prognosis." Id. As such, it constitutes medical evidence accepted and relied upon by a medical source and must be addressed by an ALJ in making a determination regarding a claimant's disability. This Court has repeatedly held that an ALJ's failure to explain how he weighted and discounted the significance of a claimant's GAF score requires a remand for the ALJ to clarify the basis of his holding. See, e.g., Dougherty v. Barnhart, No. 05-5383, 2006 WL 2433792 (E.D. Pa. Aug. 21, 2006); Colon v. Barnhart, 424 F. Supp. 2d 805, 813 (E.D. Pa. 2006); Span ex rel. R.C. v. Barnhart, No. 02-7399, 2004 WL 1535768 (E.D. Pa. May 21, 2004); Escardille v. Barnhart, No. 02-2930, 2003 WL 21499999 (E.D. Pa. June 24, 2003).

While the ALJ explicitly cited the GAF score of 55 assigned to Plaintiff by a MSW intern, he failed to even mention the GAF score of 38 given to Plaintiff several months later by Dr. Rosillo. Because a GAF constitutes medical evidence accepted and relied upon by a medical source, it must be addressed by an ALJ in making a determination regarding a claimant's disability.[7]

[7] Defendant points out that Dr. Rosillo did not assign a time period for this GAF score, and that, since this score was assigned at Dr. Rosillo's initial consultation with Plaintiff, it cannot reflect "a historical view of her level of functioning" for any twelve month period and thus has limited evidentiary value. (Def.'s Br. at 19) (quoting Morris v. Barnhart, No. 03-1332, 2003 WL 22436040, at *3 (3d Cir. Oct. 28, 2003) (not precedential)). Even if the ALJ chose to discount Plaintiff's score on this basis, this did not alleviate his obligation to address his reasons for doing so in his opinion. See Adorno, 40 F.3d at 48.

The same conclusion holds true for the ALJ's failure to discuss Plaintiff's treatment records from New Life where Plaintiff testified she had been undergoing mental health treatment under the care of Dr. Rosillo, her psychiatrist, and Boris Belyer, her therapist, for approximately eight months. (R. at 50-51). Since these records contain statements from Plaintiff's physician that "reflect judgments about the nature and severity of [a claimant's] impairments" and are thus medical opinions under the Social Security regulations, the ALJ was required to evaluate them in reaching his decision. 20 C.F.R. § 416.927(a)(2), (d).

Although the ALJ "may properly accept some parts of the medical evidence and reject other parts . . . she must consider all the evidence and give some reason for discounting the evidence she rejects." Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994). After examining the record, the Court is unwilling to conclude that the ALJ's decision is based upon substantial evidence. On remand, the ALJ has a responsibility to specifically address both Plaintiff's treatment records at New Life and the GAF score assigned to Plaintiff contained therein and, if he chooses to discount them, to fully explain his reasons for doing so.

2. The ALJ's Hypothetical to the Vocational Expert Failed to Account for All of Plaintiff's Mental Limitations

Plaintiff also argues that the ALJ's failure to list Plaintiff's mental impairment in his hypothetical to the VE made it error for the ALJ to rely on the opinion of the VE in concluding that Plaintiff retained the RFC to perform some types of sedentary work. (Pl.'s Br. at 28-29). Defendant's brief does not address this point.

Testimony of a VE constitutes substantial evidence only where the hypothetical question posed by the ALJ fairly encompasses all of an individual's significant limitations that are

supported by the record. See Ramirez v. Barnhart, 372 F.3d 546, 552 (3d Cir. 2004); Burns v. Barnhart, 312 F.3d 113, 123 (3d Cir. 2002). However, there is no requirement that the hypothetical list "every impairment *alleged* by a claimant." See Rutherford v. Barnhart, 399 F.3d 546, 554 (3d Cir. 2005) (emphasis in original). Instead, the ALJ is required to submit to the vocational expert only those impairments that are credibly established by the record. Id.

In this case, while the ALJ did not list Plaintiff's bipolar disorder by name when he questioned the VE, he posed two hypotheticals that took Plaintiff's mental limitations into account. After questioning the VE on what jobs a hypothetical individual could do who had Plaintiff's physical limitations, he then added the following "mental assumptions": "Not complicated tasks. No more than simple decision making. Requires a low stress . . . stable work environment. . . . No ability to interact with the public. Occasional ability to interact with coworkers supervisors, and occasional lapses in concentration." (R. at 74). After the VE concluded that such a person could work as a lamp shade assembler, an unskilled and sedentary position that also took into account that person's physical limitations, the ALJ posed a further hypothetical where the individual suffered from "frequent lapses in concentration." Id. In that case, the VE concluded that, in conjunction with the physical limitations already outlined by the ALJ, such "frequent lapses in concentration . . . would not allow someone to be productive in a work environment." (R. at 75).[8]

Although the ALJ's hypothetical incorporated multiple accommodations beyond the traditional definition of sedentary work, including the possibility that Plaintiff's might suffer from

[8] The ALJ's final determination found that Plaintiff suffered only from occasional, and not frequent, lapses in concentration and that she was therefore not disabled and able to work. (R. at 30).

frequent lapses in concentration, Dr. Rosillo's assessment and Plaintiff's GAF score, implicated many more limitations. In addition to finding that Plaintiff had lapses in concentration, Dr. Rosillo further opined that Plaintiff "experiences extreme mood swings and racing thoughts that would make her absolutely disfunctional in any activities," and that she "demonstrates poor memory capacity [and] difficulty comprehending." (R. at 285). A GAF score of 38 signifies "some impairment in reality testing or communication . . . or major impairment in several areas, such as work or school, family relations, judgment, thinking or mood." DSM-IV at 34. The accommodations of a low stress, stable work environment, uncomplicated tasks and simple decision making, no ability to interact with the public, and some ability to interact with coworkers and supervisors, do not capture the extent of the impairments found by Dr. Rosillo.

Because the ALJ failed to properly consider the opinion of Plaintiff's treating physician, as well as the GAF score he assigned to her, the Court concludes that the hypothetical posed in this case did not fairly encompass all of an individual's significant limitations that are supported by the record. See Ramirez, 372 F.3d at 552. Thus, the Court holds that the VE's opinion is deficient because the ALJ's hypothetical question did not reflect all of Plaintiff's mental limitations which were supported by the record. The case must be remanded to the Commissioner of the Social Security Administration so that the ALJ can clarify the basis of his holding.

C. The ALJ Properly Evaluated Plaintiff's Subjective Complaints of Pain

Plaintiff's second argument is that the ALJ failed to properly credit Plaintiff's subjective complaints of pain when he determined that Plaintiff's complaints were "not totally credible." (R.

at 29).[9] Defendant responds that the ALJ adequately evaluated Plaintiff's credibility in determining that Plaintiff had the RFC to perform some types of sedentary work and was therefore not disabled. (Def.'s Br. at 22).

An ALJ must consider a claimant's subjective symptoms, including pain, and may not discount those symptoms if they are reasonably consistent with the objective medical evidence and other evidence in the record. See Chrupcala v. Heckler, 829 F.2d 1269, 1275-76 (3d Cir. 1987); 20 C.F.R. § 404.1529. Conversely, an individual's subjective complaints of pain will not be conclusive evidence of disability absent objective medical evidence that demonstrates the existence of a medical impairment. 20 C.F.R. § 416.929(a); Hartranft v. Apfel, 181 F.3d 358, 362

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[9] Plaintiff's briefing on this issue is limited and makes minimal use of the record to support her argument that the ALJ did not adequately credit her subjective complaints. Instead, Plaintiff focuses on the argument that the ALJ's opinion fails to give sufficient credence to a March 5, 2003 letter written by one of her treating physicians, Dr. C.R. Sridhara, that Plaintiff "would have difficulty maintaining a sustained activity level for a period of time and may need frequent breaks, possibly ever 15 to 30 minutes, even with minimal activity." (Pl.'s Br. at 35) (quoting R. at 225). If this testimony were credited, Plaintiff contends that it might have altered the ALJ's finding that Plaintiff could function in some kinds of sedentary positions because the VE testified at her hearing that "the need for breaks every 15 to 30 minutes would far exceed what would be tolerated in . . . competitive jobs." (R. at 75). Although Plaintiff does not make this point explicitly, Plaintiff is apparently arguing that the ALJ failed to follow the treating physician rule with respect to Dr. Sridhara's opinion.

As discussed at length in the last section, treating physician's opinions are afforded controlling weight if they are well-supported by diagnostic evidence and are consistent with other medical evidence in the record, and it is an error of law to reject the treating physician's opinion without adequate explanation. 20 C.F.R. § 404.1527(d)(2); Fargnoli v. Massanari, 247 F.3d 34, 42 (3d Cir. 2001).

As the discussion of ALJ's treatments of subjective complaints of pain reveals, there is a significant amount of contradictory evidence, including in Dr. Sridhara's own treatment notes, about Plaintiff's ability to maintain a sustained activity level. Furthermore, the ALJ discusses his reasons for discounting the statements made in that letter at length. (R. at 26). As a result, the Court finds that the ALJ did not violate the treating physician rule with respect to Dr. Sridhara's opinion.

Plaintiff further argues that, since this assessment could have been dispositive if the ALJ had credited it, the ALJ was required to re-contact Dr. Sridhara to clarify his statements if he believed them to be contradictory. (Pl.'s Br. at 34). There are numerous medical evaluations of Plaintiff's condition by Dr. Sridhara in the record, which leads the Court to conclude that the ALJ had more than sufficient evidence upon which to base his opinion and had no need to re-contact the doctor to clarify his statements. See Soc. Sec. Ruling 96-5p, 1996 WL 374183, at *6.

(3d Cir. 1999). It is the ALJ's responsibility to resolve conflicts in the evidence and to determine credibility and the relative weights to give to the evidence. See Plummer, 186 F.3d 422, 429 (3d Cir. 1999); Mason v. Shalala, 99 F.2d 1058, 1066 (3d Cir. 1993). Hence, an ALJ's credibility determinations are entitled to great deference and should not be discarded lightly. See Reefer v. Barnhart, 326 F.3d 376, 380 (3d Cir. 2003).

At the same time, the credibility determination must meet certain requirements. It "must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight." Schwartz v. Halter, 134 F. Supp. 2d 640, 654 (E.D.Pa. 2001) (quoting Soc. Sec. Ruling 96-7p, 1996 WL 374186, at *4; Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 433 (3d Cir.1999)).

The ALJ's opinion in this case more than satisfies this standard. Plaintiff testified at the hearing, as well as in her application for benefits, that she has severe pain in her lower back that radiates down her legs (R. at 56, 133-36). There is limited objective medical evidence to support this claim. The Magnetic Resonance Imaging ("MRI") of Plaintiff's spine conducted on October 26, 2003 reveals that Plaintiff's has "mild degenerative disc disease," but this condition is not always associated with pain (R. at 303). Furthermore, as Defendant points out, straight leg tests and Patrick tests conducted by Plaintiff's physicians over a period running from March 21, 2001 to June 4, 2003 were consistently negative for root pressure, tension, irritation, or sacroiliac disease. (R. at 155, 157, 159, 164, 165, 167, 170, 172, 174, 176, 179, 223, 271, 273, 275, 277).

The ALJ's decision also identifies numerous inconsistencies between Plaintiff's

representations and other the facts in the record. Three of the physicians who examined Plaintiff all questioned Plaintiff's subjective accounts of her pain in their notes. (R. at 155, 282, 283). For example, Dr. C.R. Sridhara's note from his August 21, 2002 consultation with Plaintiff remarks that, while Plaintiff walked with an antalgic gait, or limp, in the examination room, she did not exhibit the same behavior in the hallway after her visit. (R. at 155). Another physician who examined Plaintiff on June 4, 2003, Dr. Robert J. Sass, notes that Plaintiff's "symptoms seem to diminish when the patient is distracted." (R. 283).

There is also evidence in the record that the Plaintiff frequently not did not comply with her physicians' orders regarding treatment. (R. at 155, 159, 164, 167, 169, 172, 174). As Dr. Kamen, a physician who examined Plaintiff on March 13, 2003, three months after her hearing before the ALJ, opined the "focus of [Plaintiff's] problem remains lack of real effort to regain control over [her] symptoms and regain a real quality of life." (R. at 282).

Plaintiff's reports about her ability to walk short distances are also inconsistent. On July 24, 2002, she reported to Dr. Sridhara that she was able to walk for approximately one hour for about twelve blocks, (R. at 157), yet her application for benefits, completed on August 14, 2002, stated that she was only able to walk for two to three blocks. (R. at 129). Plaintiff testified at her hearing on November 26, 2003 that she could walk no more than three of four blocks and could not stand for more than ten minutes at a time. (R. at 59).

Finally, despite these inconsistencies in Plaintiff's complaints of pain and the lack of objective medical evidence to substantiate those complaints, the ALJ's final determination still makes reasonable accommodations for Plaintiff's physical limitations. In his opinion, the ALJ questioned some of the medical evidence in the record regarding Plaintiff's claims of fibromyalgia

and chronic pain syndrome. Nonetheless, the ALJ ultimately credited the opinions of two Plaintiff's physicians, Dr. Sridhara and Dr. Kamen, that plaintiff's impairments resulting from fibromyalgia were severe. (R. at 26). Furthermore, even though the ALJ states that Dr. Sridhara's impression of chronic pain syndrome and fibromyalgia is "tenuous," he goes to on to place "reasonable limitation . . . on the strength demands of work" as a result of these diagnoses. (R. at 27). With respect to Plaintiff's subjective account of the pain she experiences, the ALJ found that Plaintiff's accounts were "not a reliable guide in assessing her residual functional capacity." (R. at 26). Nonetheless, his ruling allows "reasonable accommodation" for these complaints and accordingly finds that "standing/or walking is limited to the minimum required for work and she is permitted to sit and/or stand at will. Postural limitations follow for the same reason." (R. 27).

The Court concludes that the ALJ's determination that Plaintiff's complaints are not fully credible is amply supported by the evidence in the record. In reaching that conclusion, the ALJ cited specific instances where Plaintiff's subjective complains of pain were inconsistent with evidence in the record, including in the notes of several of her treating physicians. See Hartranft, 181 F.3d at 362. These inconsistencies constitute substantial evidence on which the ALJ properly relied in discounting Plaintiff's credibility. Thus, there was no error in the ALJ's credibility determination. Accordingly, this Court finds that substantial evidence exists in the record to support the ALJ's conclusion that Plaintiff has the residual functional capacity to perform a limited range of sedentary work.

V. Conclusion

For the foregoing reasons, this Court concludes that though substantial evidence supports the ALJ's determination that Plaintiff's physical impairments do not constitute a disability under

the Act, the same is not true for the ALJ's determination as to Plaintiff's mental impairments. Upon an independent and thorough consideration of the administrative record and all of the parties' filings, the Court concludes that Plaintiff's Motion for Summary Judgment will be granted in part, and the case will be remanded to the Commissioner on the basis that the ALJ's written opinion failed to properly indicate how the ALJ weighed and discounted certain record evidence. Though Plaintiff has requested a summary judgment order awarding benefits forthwith, the Court does not believe that the failure of the ALJ to adequately explain his reasons for discounting the opinion of Plaintiff's treating physician as well as his failure to address certain medical evidence necessarily indicates that there is substantial evidence on the record that Plaintiff is disabled and entitled to benefits. The Court must therefore remand the case for a new hearing. Defendant's Motion for Summary Judgment will be granted in part and denied in part. Similarly, Plaintiff's Motion for Summary Judgment will be granted in part and denied in part. The case will be remanded for further proceedings in accordance with this opinion.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DORIS ROBLETO	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner of the Social Security Administration,	:	NO. 05-4843
	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 28th day of September, 2006, after careful and independent consideration of the parties' Cross-Motions for Summary Judgment, and review of the record, it is hereby ORDERED that:

1. Plaintiff's Motion for Summary Judgment (Doc. No. 9) is GRANTED IN PART and DENIED IN PART;

2. Defendant's Motion for Summary Judgment (Doc. No. 11) is GRANTED IN PART and DENIED IN PART; and

3. The case is remanded to the Commissioner in accordance with the foregoing Memorandum. This remand is ORDERED pursuant to the fourth sentence of 42 U.S.C. § 405(g).

4. The Clerk shall mark this case as CLOSED.

BY THE COURT:

/s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.